the law, not the creation of it. The statute from which the power is derived, as the court says, is virtually an authority to enforce the common-law rule that a carrier must not make unreasonable charges; this consideration furnishes no ground for attributing to this power a scope of which the common-law courts never dreamed. The strongest argument, perhaps, against the enlarged power contended for lies in the fact that the statute nowhere confers it. No legislative function can be inferred from a statute giving merely executive or judicial powers; such a function under the circumstances can arise only by express provision. In fact, if one were to draw any inference from the statute, that inference would be against a power on the part of the commission to fix rates; for by the statute the right to reduce or to increase rates in conformity with certain conditions is expressly given to the railroad companies themselves. A rational interpretation of the statute, therefore, in accordance with the analogy of the rule of common law, justifies the court when it decides that the power of the commission is to be narrowly construed, and that in publishing a schedule of rates and attempting to force railroad companies to adopt it, the commission has acted in excess of its authority.

IS OUR CIVIL SERVICE ACT FUTILE? — In view of three recent decisions, widespread interest has been aroused in the question of the right of courts of equity to interfere in removals from office of public officials whose positions are embraced within the rules drawn up by the President to give effect to the Civil Service Act. On July 28, 1897, in the case of *Priddie* v. *Thompson*, 82 Fed. 186, the United States Circuit Court for West Virginia granted an injunction restraining a marshal from removing a deputy marshal from office, the main cause for such removal having been "political opinions or affiliations." On Sept. 14 and 15, 1897, in the cases of *Woods* v. *Gary* (see 25 Wash. L. R. 591) and *Carr* v. *Gordon*, 82 Fed. 373, the Supreme Court of the District of Columbia and the United States Circuit Court for Illinois refused to grant such an injunction on substantially the same facts as in the case above. It will be remembered that the Civil Service Act, passed in 1883, authorized the President, and a commission appointed by him, to prepare rules to carry the act into effect, such rules to provide, among other things, that no officer should be removed for refusal to contribute for partisan objects. Among the rules thus drawn up by the President was one forbidding dismissal from the executive civil service of any one for "political or religious opinions or affiliations." This was followed in a later administration by an amendment requiring that full notice and opportunity of defence be given to the officer to be removed. Upon this rule, or its amendment, the plaintiffs in the three cases cited based their right. Jackson, J., in *Priddie* v. *Thompson*, *supra*, said that such rules are part of the law of the land; that the object of the act is to restrain removal from office, otherwise it is futile; and that the plaintiff having a vested right in the office the court would grant an injunction to protect such interest. The courts in *Woods* v. *Gary* and *Carr* v. *Gordon*, on the other hand, maintained that the rules thus drawn up by the President are for the regulation of executive officers, but are not a part of the law; and that the plaintiff acquired no vested right to hold office by virtue of these executive regulations.

The view taken in these two later cases would seem to be the sounder

one. The President made the rules, and he may at his pleasure rescind them. He may draw up such rules for the regulation and discipline of his public officers, but to call the rules, though authorized by Congress, a part of the law of our land, would appear to be giving the executive more than his constitutional powers and infringing on the rights of the legislature. If it be said that the act would then be stripped of its purpose, it may be answered that the purpose of the act is found in its express provisions, namely, the establishment of competitive examinations and the forbidding of removals for refusal to contribute for partisan objects. The fact that only removal for such cause was prohibited would seem to show that Congress, wisely or not, intended to leave removals for other causes to the regulation and discretion of the executive, the principle of *expressio unius est exclusio alterius* applying.

CRITICISM OF JUDGE NO CONTEMPT OF COURT. — An instructive instance of the way in which the courts of this country have sometimes been obliged to depart from the common law of England, simply on the ground that it is inconsistent with the spirit of our institutions, is found in the case of *State* v. *Circuit Court of Eau Claire County et al.*, 72 N. W. Rep. 173 (Wis.). The facts of this case, which was an application for a writ of prohibition to restrain a lower court from punishing an alleged contempt, were of a very unusual character. Articles were published in a newspaper criticising the conduct of a judge who was then a candidate for re-election to his office, and accusing him of partiality and corruption, though not with regard to any particular case then pending. This judge thereupon had the author of the article and the publisher of the newspaper brought before him on a charge of contempt of court. On the application for the prohibition the question to be decided was whether the judge had power to punish as a contempt the publication of such articles, supposing them to be proved libelous. The Supreme Court of Wisconsin held that he had no such power; and in so doing followed the current of authority in this country. In England it has always been said that the publication of any libel upon a judge of the superior courts in the conduct of his office was a contempt of court, as tending to bring the administration of justice into disrepute, and might be summarily punished as such. The power thus lodged in the English courts, however, has very seldom been used, except in instances where the attack has been upon the conduct of the court in some case then before it, in which instance there is an evident attempt to improperly influence judicial action. It has been held, moreover, that this power to punish for any disrespectful comment belongs only to the superior courts, which are invested with a peculiar and time-honored sanctity, as direct representatives of the Sovereign's Majesty, and not to inferior courts of record, although the latter do possess the ordinary powers of punishing for contempt which are necessary for their protection in the discharge of their functions.

In this country, the courts have not been backward in asserting their inherent and necessary power, without the aid of legislatures, or even in spite of attempted interference on their part, to punish summarily for contempt; and the publication of articles reflecting on the conduct of judges or officers of the court in a pending suit has generally been held to amount to contempt. In a few cases the power has been asserted as broadly as in England, but for the most part, when the point has arisen, it has been held that the courts have no power to punish as con-